

DEPARTMENT OF SOCIAL SERVICES  
744 P Street, Sacramento, California 95814



November 20, 1997

ALL- COUNTY LETTER NO. 97-75

**REASON FOR THIS TRANSMITTAL**

**TO:** ALL PUBLIC AND PRIVATE  
ADOPTION AGENCIES  
ALL ADOPTION SERVICE  
PROVIDERS  
CDSS ADOPTION DISTRICT  
OFFICES

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order or Settlement Agreement
- ☐ Clarification Requested by One or More  
Counties
- ☒ Initiated by CDSS

**SUBJECT: INDIAN CHILD WELFARE ACT REFERRALS**

The purpose of this All-County Letter is to remind adoption agencies and adoption service providers (ASPs) about the requirements of Title 22 California Code of Regulations (CCR) Section 35361 (a) (1), regarding the procedure to refer children for determination of their Indian ancestry under the Indian Child Welfare Act (ICWA), and Sections 35135 (a) (3) and 35094.3 (a) (2), regarding ICWA requirements for taking relinquishments and consents. We wish to emphasize the regulation that requires an agency to determine whether a child is subject to the provisions of the ICWA before taking a relinquishment or administering the execution of an Adoptive Placement Agreement (consent). Also, we would like to emphasize that an ICWA referral must be made, even though the California Supreme Court has ruled in the case of In re Bridget R. 41 Cal. App. 4th 1483 (1996), that the ICWA is not applicable if the parent had no significant social, cultural, or political relationships with the tribe. The decision in Bridget R. relates to the applicability of the "existing Indian family doctrine" to a specific case and has no direct effect on the purpose and requirements of the regulations cited in this letter. Therefore, the case does not change adoption agencies' and ASPs' responsibility to comply with a specific adoption program regulation.

Title 22 CCR Section 35361 (a) (1) requires that the AD 4311 form and a certified copy of the child's birth certificate be immediately submitted to the California Department of Social Services (CDSS) if the birth parent states that there is Indian ancestry in the family background. The CDSS forwards the AD 4311 and birth certificate (if available) to the Bureau of Indian Affairs (BIA) or appropriate tribe. This procedure ensures that all documents pertaining to the child's tribal enrollment and Certificate of Degree of Indian Blood are made a permanent part of his or her adoption record and are housed in a central location as required by Family Code Section 8619 and that all appropriate tribes are contacted. There have been many instances where agencies and adoption service providers have sent the AD 4311 form directly to the BIA or Indian tribe rather than through the CDSS. As a result, the CDSS has not always been informed of responses from the BIA or tribe, and thus does not know which requirements of statute and regulation apply to the case for purposes of acknowledging receipt of properly executed documents. We ask that you send all AD 4311 forms through the Adoptions Branch Central Office. Your cooperation in following this procedure ensures more consistent

compliance with the provisions of Section 35361 (a) (1) and avoids possible duplication of effort that results when you submit a clearance that was not obtained through the CDSS.

Section 35135 (a) (3) requires that prior to accepting the parent's relinquishment of a child for adoption, the agency must determine whether the child is subject to the provisions of the ICWA. Section 35094.3 (a) (2) requires that the ASP must determine whether the child is an Indian child prior to witnessing the signing of the Adoptive Placement Agreement (consent). These requirements ensure: 1) that the agency or ASP uses the correct procedure in taking the parent's relinquishment/consent; i.e., taking the relinquishment/consent in court if the child is subject to the provisions of the ICWA, thus giving the parents all rights that are accorded a parent of an Indian child; 2) that tribes are accorded the right to notice and intervention if an involuntary termination is necessary; and 3) that the agency or ASP follows other regulatory procedural requirements relating to children under the ICWA. Additionally, by following the correct procedure, agencies or ASPs avoid the potential problem of having to readminister the relinquishment/consent and resulting confusion surrounding parents' legal rights and obligations with regard to the child in the intervening period.

The CDSS recognizes that there are situations in which it is very unlikely that the child will be subject to the ICWA, but a referral for official determination must be made because a potential tribal affiliation has been identified. We are also aware that there are cases where the agency or ASP is concerned that the birth parent will not or is likely not to be available for future contacts. In such circumstances, some agencies or ASPs have been taking relinquishments/consents before the ICWA procedure is completed. This could result in denying a parent or tribe ICWA rights, thereby jeopardizing the adoption, and giving the parent the erroneous impression that he or she has completed the process and need not be available for future contacts. This practice presents a problem because it contradicts public policy to safeguard children's interests and ensure legally sound adoptions.

We appreciate your cooperation and efforts in adhering strictly to the requirements of Title 22 CCR Section 35135 (a) (3) and Section 35094.3 (a)(2). By following these procedures, unnecessary delays are avoided and the rights of all parties to the adoption are protected. If you have any questions regarding this letter, please contact the Adoptions Systems Unit at (916) 322-3778.

  
MARJORIE KELLY  
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Children and Family Services Division

c: CWDA